

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 10F-BD014-BNK

3 **CRESTWOOD MGMT LLC AND JASON W.  
RAYFORD, PRESIDENT**

**NOTICE OF HEARING**

4 23550 Commerce Park drive, Suite 5000  
5 Beachwood, Ohio 44122,

6 Petitioners.

7 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,  
8 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of  
9 Administrative Hearings, an independent agency, and is scheduled for May 12, 2010, at 1:00 p.m., at  
10 the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602)  
11 542-9826 (the "Hearing").

12 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order  
13 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to  
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) an order  
17 to pay restitution of any fees earned in violation of A.R.S. §§ 32-1001, *et seq.*, pursuant to A.R.S. §§  
18 6-131 and 6-137; and (4) an order or any other remedy necessary or proper for the enforcement of  
19 statutes and rules regulating collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

20 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of  
21 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied  
22 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to  
23 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the  
24 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office  
25 of Administrative Hearings has designated Lewis Kowal, at the address and phone number listed  
26 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona

1 Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08,  
2 the Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing,  
3 final decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative  
4 Law Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable  
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence  
12 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative  
13 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.  
14 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
16 made by a court reporter or by electronic means. Any party that requests a transcript of the  
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
19 Attorney General Erin Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona 85007.

#### 20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions  
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules  
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through  
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20)**  
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position  
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of  
4 Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or  
5 information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which  
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners  
7 intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioners  
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised  
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**  
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as  
12 true and admitted and the Superintendent may take whatever action is appropriate, including issuing  
13 an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating  
14 collection agencies in Arizona pursuant to A.R.S. §§ 6-123 and 6-131, and imposing a civil money  
15 penalty pursuant to A.R.S. § 6-132.

16 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial  
17 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
18 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
19 Arizona 85007 and to Assistant Attorney General Erin Gallagher, Consumer Protection & Advocacy  
20 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

21 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
22 **alternative format or assistance with physical accessibility.** Requests for accommodations must  
23 be made as early as possible to allow time to arrange the accommodations. If accommodations are  
24 required, call the Office of Administrative Hearings at (602) 542-9826.

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**FACTS**

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2           1.       Petitioner Crestwood Mgmt LLC ("Crestwood") is a Delaware limited liability  
3 company that is not and was not at any time material herein authorized to transact business in  
4 Arizona as a collection agency within the meaning of A.R.S. §§ 32-1001, *et seq.* The nature of  
5 Crestwood's business is that of soliciting claims for collection and collection of claims owed, due, or  
6 asserted to be owed or due within the meaning of A.R.S. § 32-1001(2)(a).

7           2.       Petitioner Jason W. Rayford ("Mr. Rayford") is the President of Crestwood and is not  
8 and was not at any time material herein authorized to transact business in Arizona as a collection  
9 agency within the meaning of A.R.S. §§ 32-1001, *et seq.*

10          3.       Crestwood and Mr. Rayford are not exempt from licensure as a collection agency  
11 within the meaning of A.R.S. § 32-1004(A).

12          4.       On July 20, 2009, the Department received Petitioners' notarized Arizona Department  
13 of Financial institutions Collection Agency Application ("Application"), which was completed and  
14 signed by Crestwood's Secretary.

15          5.       On July 20, 2009, the Department received a notarized Arizona Department of  
16 Financial Institutions Collection Agency Financial Statement ("Financials"), which were prepared  
17 and signed by Crestwood's Controller. The Financials disclosed nine thousand, two hundred fifteen  
18 dollars (\$9,215.00) in Arizona Gross Annual Income on page 4, line 24.

19          6.       On July 28, 2009, the Department sent a letter to Crestwood requesting additional  
20 information required in order to process Crestwood's Application.

21          7.       On July 30, 2009, the Department received the items requested in the Department's  
22 July 28, 2009 letter. The items submitted included a spreadsheet showing CCS's (Crestwood's  
23 predecessor) collection activity in Arizona from January 1, 2009 through June 30, 2009.

24          8.       Based upon the above findings, the Department issued and served upon Crestwood  
25 and Mr. Rayford a Notice of Assessment on November 2, 2009.

26          9.       On November 12, 2009, the Department received Petitioners' request for a hearing to

1 appeal the Notice of Assessment.

2 LAW

3 1. Pursuant to Title 6 and Title 32, Chapter 9 of the Arizona Revised Statutes, the  
4 Superintendent has the authority and the duty to regulate all persons engaged in the collection  
5 agency business and with the enforcement of statutes, rules, and regulations relating collection  
6 agencies.

7 2. Crestwood Mgmt LLC's and Mr. Rayford's conduct as alleged above constitutes  
8 engaging in the conduct of a collection agency in the State of Arizona without having first obtained a  
9 collection agency license pursuant to A.R.S. § 32-1021(A), in violation of A.R.S. § 32-1055(A).

10 3. Petitioners do not meet any of the exemptions to the licensing requirements set forth  
11 in A.R.S. § 32-1004(A).

12 4. The violations, set forth above, constitute grounds for: (1) the issuance of an order  
13 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to  
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) an order  
17 to pay restitution of any fees earned in violation of A.R.S. §§ 32-1001, *et seq.*, pursuant to A.R.S. §§  
18 6-131 and 6-137; and (4) an order or any other remedy necessary or proper for the enforcement of  
19 statutes and rules regulating collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

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1           WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the  
2 above-described violations, the Superintendent may issue a cease and desist order pursuant to A.R.S.  
3 § 6-137; affirm the November 2, 2009, Notice of Assessment; impose a civil money penalty  
4 pursuant to A.R.S. § 6-132; order the restitution of any fees earned in violation of A.R.S. §§ 32-  
5 1001, *et seq.*, pursuant to A.R.S. §§ 6-131 and 6-137; and order any other remedy necessary or  
6 proper for the enforcement of statutes and rules regulating collection agencies pursuant to A.R.S.  
7 §§ 6-123 and 6-131.

8           DATED this 26<sup>th</sup> day of January, 2010.

9                                   Thomas L. Wood  
10                                  Acting Superintendent of Financial Institutions

11                               By   
12                                  Robert D. Charlton  
13                                  Assistant Superintendent

14           ORIGINAL of the foregoing filed this 26<sup>th</sup>  
15           day of January 2010, in the office of:

16           Thomas L. Wood  
17           Acting Superintendent of Financial Institutions  
18           Arizona Department of Financial Institutions  
19           ATTN: Susan Longo  
20           2910 N. 44th Street, Suite 310  
21           Phoenix, AZ 85018

22           COPY mailed same date to:

23           Lewis Kowal, Administrative Law Judge  
24           Office of the Administrative Hearings  
25           1400 West Washington, Suite 101  
26           Phoenix, AZ 85007

          Erin O. Gallagher, Assistant Attorney General  
          Office of the Attorney General  
          1275 West Washington  
          Phoenix, AZ 85007

1 Robert D. Charlton, Assistant Superintendent  
2 Richard Fergus, Licensing Division Manager  
3 Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

4 AND COPY MAILED SAME DATE by  
5 Certified Mail, Return Receipt Requested, to:

Jonathan Monson, Esq.  
6 Crestwood Mgmt LLC  
1010 Wayne Ave., Ste. 720  
7 Silver Spring, MD 20910  
8 Petitioners

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